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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DATAQUILL LIMITED,

Plaintiff,

V.

HIGH TECH COMPUTER CORP.,

Defendant.

HTC CORPORATION,

Counterclaimant,

V.

DATAQUILL LIMITED,

Counterdefendant.

Case No. 08CV543-IEG (BGS)

**HTC CORPORATION'S OPENING BRIEF  
ON CONSTRUCTION OF CLAIMS OF  
(REEXAMINED) U.S. PATENT NOS.  
6,058,304 AND 7,139,591**

DEMAND FOR JURY TRIAL

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Magistrate  
Judge: Hon. Bernard G. Skomal

Trial Date: Not Set

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## I. INTRODUCTION

HTC Corporation (“HTC”) submits this brief concerning the proper construction of the disputed terms of the asserted claims<sup>1</sup> of two patents asserted by DataQuill Limited (“DataQuill”) – U.S. Patent Nos. 6,058,304 (“the ‘304 patent”) (Ex. A) and 7,139,591 (“the ‘591 patent”) (Ex. B)<sup>2</sup>. The ‘304 and ‘591 patents are referred to collectively as the patents-in-suit.

## II. BRIEF PROCEDURAL HISTORY OF THE CASE

In late 2006 and early 2007, a third party filed requests with the United States Patent and Trademark Office (“USPTO”) to reexamine the patents-in-suit on the basis of substantial new questions of patentability based upon certain prior art references. The USPTO granted those requests. DataQuill filed the present case against HTC on March 24, 2008, alleging infringement of the patents-in-suit, while the patents-in-suit were in reexamination. On April 1, 2009, HTC filed a motion to stay the case pending reexamination of the patents-in-suit. On May 14, 2009, this Court granted HTC’s request to stay the case. On December 8, 2009, the Court entered an order extending the stay of the case, pending completion of the reexaminations. On April 1, 2010, upon conclusion of the reexaminations, the Court lifted the stay.

## III. The PATENTS AND ASSERTED CLAIMS

### A. Disclosure and Stated Goals of the Patents

The patents-in-suit<sup>3</sup> disclose a data entry system that includes a hand held data entry unit that has a reading sensor for sensing commands and data. ‘304 patent abstract, 2:13-16; 4:52-56.

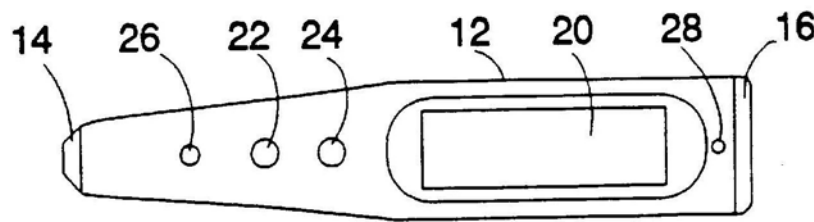
<sup>1</sup> DataQuill has identified the following claims as being asserted in this case (“the asserted claims”) (grouped in order of dependencies): for the reexamined ‘304 patent, claims 62, 64, 65, 66, 67, 69, 70, 73, 75, 76, 77, 78, 79, 39, 40, 44, 45, 47, 52, 53, 55, 56, 57, 59, 60, 80, 81, 82, 83, 85, 86, 94, 95, 97, 98, 100, 101, 103, 104, 107, 109, 113, 115, 8, 9, 12, 13, 20, 22, 23, 32, 34, 35, 39, 40, 41, 44, 45, 47, 52, 53, 55, 56, 57, 59 and 60; for the reexamined ‘591 patent, claims 32, 33, 35, 38, 39, 40, 41, 42, 44, 47, 48, 54, 55, 56, 59, 60, 61, and 62. HTC contends that this is an excessive number of claims to be carried through claim construction, discovery and trial and intends to move the Court to limit the number of claims that DataQuill may assert, by a date certain.

<sup>2</sup> All citations to exhibits are to the Declaration of Gregg A. Duffey with HTC’s Exhibits of Markman Materials filed concurrently. Page numbers appearing in [brackets] refer to the exhibit footer page numbers.

<sup>3</sup> DataQuill filed the application for the ‘591 patent as a second continuation of the application for the ‘304 patent, so the patents have specifications substantially identical to one another, essentially with the exception of differences in column and line references. Because the specifications are essentially identical, in many instances, HTC may cite only to the ‘304 patent or the ‘591 patent (in the format of “column:line number”), but analogous references could be made to the other patent specification. Further, even though HTC has cited to certain specific examples of evidence in this brief, it still relies upon all of the intrinsic and extrinsic evidence cited in the Joint Claim Construction Chart (Document 61).

The patents-in-suit explain the motivations for the alleged invention including: the bulkiness of prior art data entry systems ('304 patent, 1:23-26, 2:8-10); the need for two hands to operate the prior art data entry systems ('304 patent, 1:23-26); the problem that an abundance of keys on prior art data entry systems led to keys being pressed inadvertently ('304 patent, 2:8-10).

The preferred and only disclosed embodiment has the shape of a thick pen that can be held and operated using a single hand and the patents refer to the data entry device as "the pen." '304 patent, 6:28-35 ("The pen 10 is intended to be held for essentially one handed operation between the thumb and forefinger of either the left or right hand in the manner of a conventional, if rather thicker than usual, pen."). Figure 1A shows a top view of this embodiment:



**10**

**FIG. 1A**

According to the patents, this "pen" contains a reading sensor in a reading head. '304 patent, 5:35-43. Examples of reading sensors disclosed by the patent are bar code readers and dot code readers that can read coded data and commands, as well as reading sensors that enable recognizable characters to be traced on a surface in a manner that can be recognized by the device. '304 patent, 3:47-65. Another example is a camera with character or image recognition logic. '304 patent, 5:35-43. The idea is that the reading sensor is capable of recognizing commands or data that it senses and generating a signal that it sends as an input signal to a controller to process and to use to look up information in memory in the pen concerning items represented by the sensed commands or data or items that the user has selected. '304 patent, 10:10-36. The pen's user can use the reading sensor to read information from an external object that, in turn, is used to select a "selectable item" and retrieve information from the pen's memory

about the selectable item and transmit information about that item to a remote data processing center through a telecommunications interface. '304 patent, 12:12-37. The telecommunications interface enables the pen both to transmit and receive data and commands. '304 patent, 2:51-3:27, 4:20-26. The patent describes an application of the pen in the context of a merchandise catalog. '304 patent, 10:35-36, 49-61, 11:35-44. Accordingly, the scanned codes selectable items may be items for sale. Another key part of the pen is a display that enables a user to see selections representations of commands and information.

Of critical importance is that the patent explains how the reading sensor is used to eliminate the need for a keyboard, which the patent regards as problematic. Specifically, the patent discloses a carrier, such as a sheet of material that contains a plurality of data and/or command codes that can be recognized by the reading sensor. '304 patent, 5:18-43, 52-56. Figure 6 of the '304 patent provides an example of codes on a carrier:



FIG. 6

The pen's reading sensor is used to read these codes in lieu of entry through a conventional keyboard or key pad. The patent also explains that the carrier even could be so extensive in content that "characters and commands could be arranged in the manner of a

1 standard typewriter keyboard layout to facilitate entry of individual codes.” ‘304 patent, 5:53-  
 2 56. The goal of such an arrangement is to eliminate a keyboard. “By including the command  
 3 characters as well, the need for a lot of keys on the data entry device can be avoided.” ‘304  
 4 patent, 5:33-34. The idea is that, instead of including a problematic keyboard in the pen, the  
 5 reading sensor could be used to input commands and data instead. “The control card can be  
 6 thought of as a keyboard extension for the pen 10.” ‘304 patent, 9:60-65.

7 The patent further explains that the objective of minimizing the number of keys is  
 8 accomplished through both the inclusion of the reading sensor and only one or two switches for  
 9 performing selected functions:

10 By arranging that the reading sensor can be used for the input of commands for  
 11 controlling the hand held unit, the number of user input means (e.g., keys) can be kept to  
 12 a minimum, reducing the possibility of inadvertent operation. Preferably, there are  
 13 provided one or two manually operable switches for scrolling the display in a first and/or  
 14 second direction for selectively displaying a plurality of data stored in the [memory]  
 15 storage. The scrolling of the display enables a large number of items to be accessed with  
 16 a relatively compact display. In a preferred embodiment of the invention, the first and/or  
 second switches are the only switches on the hand held unit. Preferably also, operation of  
 the first and/or second switches in predetermined operational states of the hand held unit  
 causes predetermined functions other than scrolling functions to be performed (e.g.,  
 powering-up or powering-down of the hand held unit). By the provision of only two keys  
 on the hand held unit, the possibility of accidentally operating an incorrect key can be  
 reduced, and also the hand held unit can be kept particularly compact.

17 ‘304 patent, 3:28-46 (emphasis added). The switches, however, are not a part of the reading  
 18 sensor. “The switches 22 and 24 are used to control basic operations of the data entry system  
 19 and for control of the sequential display of stored information (scrolling of the display)...”. ‘304  
 20 patent, 7:15-17.

## 21 **B. Issuance and Reexamination of the Patents**

22 As discussed above, the patents-in-suit are related, in that the ‘591 patent issued from a  
 23 second level continuation application of the application for the ‘304 patent. Because the terms of  
 24 the patents are to be construed from the perspective of a person of ordinary skill in the art at the  
 25 time the applications for those patents were filed, the Court should note that the original Patent  
 26 Cooperation Treaty (“PCT”) patent application that led to the ‘304 patent (and ultimately to the  
 27 ‘591 patent as well) was filed on September 27, 1994, and that application claimed priority under  
 28 35 U.S.C. § 119 to British application no. GB9321133, filed October 13, 1993. A chart showing



1 the relationship of these patents and applications is attached in Tab 1 to the Declaration in  
 2 Support of HTC's Motion, filed concurrently. A decision as to whether that priority claim was  
 3 proper is not a part of the claim construction proceedings.

4 As noted above, a third party filed requests with the USPTO for *ex parte* reexamination  
 5 of the claims of the '304 and '591 patents. The USPTO granted those requests on the basis that  
 6 they raised substantial new questions of patentability concerning the claims of those patents.  
 7 During reexamination, many of the claims that DataQuill asserts in this case were amended to  
 8 varying degrees – in some cases, substantially. The prosecution history concerning the  
 9 reexaminations, including amendments made to claims, all became part of the intrinsic record,  
 10 and the Court should consider them as primary evidence in construing the claims. At the  
 11 conclusion of the reexaminations, the USPTO issued reexamination certificates for each of the  
 12 patents-in-suit *See* Ex. A [30-59] and Ex. B [98-114]. The reexamination certificates show the  
 13 changes from the original claims by showing text newly added during the reexamination  
 14 proceedings in *italics* and by showing text deleted during the reexamination proceedings in  
 15 [brackets].

#### 16 17 **IV. LEGAL PRINCIPLES OF CLAIM CONSTRUCTION**

18 Claim construction is a question of law to be resolved by the court. *See Apple Computer,*  
 19 *Inc. v. Articulate Sys., Inc.*, 234 F.3d 14, 20 (Fed. Cir. 2000).

20 “The appropriate starting point . . . is always with the language of the asserted claim  
 21 itself.” *Phonometrics, Inc. v. N. Telecom Inc.*, 133 F.3d 1459, 1464 (Fed. Cir. 1998) (citations  
 22 omitted). “It is the person of ordinary skill in the field of the invention through whose eyes the  
 23 claims are construed. Such a person is deemed to read the words used in the patent documents  
 24 with an understanding of their meaning in the field, and to have knowledge of any special  
 25 meaning and usage in the field.” *Multi-form Dessicants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473,  
 26 1477 (Fed. Cir. 1998).

27 When construing claims, words of a claim are generally given their ordinary and  
 28 customary meaning to a person of ordinary skill in the art. *See Phillips v. AWH Corp.*, 415 F.3d

1 1303, 1312-13 (Fed. Cir. 2005) (en banc); *Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d  
2 1352, 1358 (Fed. Cir. 2004) (finding “customary meaning” refers to the customary meaning in  
3 the art field). As the Federal Circuit has made clear, this “ordinary and customary meaning of a  
4 claim term is the meaning that the term would have to a person of ordinary skill in the art in  
5 question at the time of the invention, i.e. as of the effective filing date of the patent application.”  
6 *Phillips*, 415 F.3d at 1313. “The inquiry into how a person of ordinary skill in the art  
7 understands a claim term provides an objective baseline from which to begin claim  
8 interpretation.” *Id.*; see *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d  
9 1111, 1116 (Fed. Cir. 2004). Courts look to “those sources available to the public that show that  
10 a person of skill in the art would have understood disputed claim language to mean.” *Phillips*,  
11 415 F.3d at 1314 (quoting *Innova/Pure Water*, 381 F.3d at 1116). “Those sources include ‘[1]  
12 the words of the claims themselves, [2] the remainder of the specification, [3] the prosecution  
13 history, and [4] extrinsic evidence concerning relevant scientific principles, the meaning of  
14 technical terms, and the state of the art.’” *Phillips*, 415 F.3d at 1314 (quoting *Innova/Pure*  
15 *Water*, 381 F.3d at 1116). All terms in a claim are presumed to have meaning. *Id.* at 1119.

16 When construing claims, the context in which a term is used in an asserted claim can be  
17 highly instructive. *Phillips*, 415 F.3d at 1314 (noting that the claim term “steel baffles” strongly  
18 implies that the term “baffles” are objects not made of steel). Further, each word used in a claim  
19 is presumed to have meaning. *Innova/Pure Water, Inc.*, 381 F.3d at 1119.

20 A patentee may use functional language in a claim pursuant to 35 U.S.C. § 112 ¶ 6.  
21 Construction of a means-plus-function limitation involves two steps. First, the claimed function  
22 must be identified. Second, the structure, if any, disclosed in the specification that corresponds  
23 to the claimed function must be identified. To correspond to the claimed function, “the structure  
24 must not only perform the claimed function, but the specification must clearly associate the  
25 structure with the performance of the function.” *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*,  
26 296 F.3d 1106, 1113 (Fed. Cir. 2002). Although the corresponding structure need not include all  
27 things necessary to enable the claimed invention to work, it must include all structure that  
28 actually performs the recited function. *Id.* at 1119. When the term “means for” is used in a

1 claim term without claiming the structure for performing the claimed function, it is presumed  
2 that 112 ¶ 6 is invoked. *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1375 (Fed. Cir. 2003).  
3 Moreover, a means-plus-function claim limitation “shall be construed to cover the corresponding  
4 structure . . . described in the specification and equivalents thereof.” 35 U.S.C. § 112 ¶ 6; *see*  
5 *also Caterpillar Inc. v. Deere & Co.*, 224 F.3d 1374, 1379 (Fed. Cir. 2000).

6 “A patentee may choose to be his own lexicographer and use terms in a manner other  
7 than their ordinary meaning, as long as the special definition of the term is clearly stated in the  
8 patent specification or file history.” *Boss Control, Inc. v. Bombardier Inc.*, 410 F.3d 1372, 1377  
9 (Fed. Cir. 2005).

10 The claims must be construed from the perspective of a hypothetical person of ordinary  
11 skill in the art at the time a patent application is filed. The fields of art of the ‘304 and ‘591  
12 patents were data entry device, sensor, and data processing technologies. While it is not clear at  
13 this time what the appropriate priority date would be for any given asserted claim, the time  
14 period for determining who a hypothetical person of skill in the art would have been would have  
15 been between October 13, 1993 and September 27, 1994. Accordingly, one of ordinary skill  
16 would have had a bachelor’s degree in electrical engineering and several years of experience in  
17 the field or in graduate research.

18 **V. HTC IS ENTITLED TO ITS OWN DAY IN COURT ON THE REEXAMINED**  
19 **CLAIMS**

20 DataQuill has asserted the original ‘304 and ‘591 patents against various opponents in  
21 past cases, and, in the claim construction process in this case has attempted to rely on courts’  
22 decisions in those past cases as support for its proposed constructions in this case. While courts,  
23 including this Court, have construed terms of the original ‘304 patent, and, in one case, the ‘591  
24 patent, HTC has never been a party to any such previous claim construction proceedings, and no  
25 court has construed the terms of these patents post reexamination. Any previous constructions  
26 are not and should not be binding on HTC. Accordingly, HTC is entitled to its day in court to  
27 make its own arguments and to present the evidence of its own choice in the manner it believes  
28

appropriate, despite DataQuill's reference to past claim constructions in support of certain of its positions.<sup>4</sup>

## VI. PROPOSED CLAIM CONSTRUCTIONS

Many terms and variants of those terms appear repeatedly throughout the claims asserted by DataQuill. In a number of cases, the variations in claim term wording have a significant impact on the proper construction of the term. For purposes of efficiency, in discussing how the disputed claim terms should be construed, where appropriate, HTC has grouped terms from claims of the '304 and '591 patents that are the same, that are variants, and/or that relate to the same concept, below. This should avoid repetition of the same discussion for the same concepts and also contrast the differences in term variations.

### A. Claim Terms

#### 1. Terms Involving "Reading Sensors" and Other Types of "Sensors"

Term	Claims Containing Term	HTC's Proposed Construction	DataQuill's Proposed Construction
"sensor"	'591 Patent <u>Independent</u> 47, 61, 62 <u>Dependent</u> 35, 59, 60	a structure capable of detecting a stimulus, such as light, temperature, radiation level, or the like, and that transmits a resulting signal.	means what it says, "a sensor" and no elaboration is needed.  In alternative, a structure capable of detecting a stimulus, such as light, temperature, radiation level, or the like, and that transmits a resulting signal.

<sup>4</sup> When DataQuill attempted to limit HTC's discovery in the present cases because HTC's counsel had been involved in other cases involving the patents in suit, this Court remarked, "The completion of discovery in the Texas action is irrelevant. Other courts evaluate the extent discovery has been completed in related cases only when both actions involve the same parties and issues. See, e.g., *Power Integrations, Inc. v. Fairchild Semiconductor Int'l., Inc.*, 2008 U.S. Dist LEXIS 102716 at \*5-6 (D. Del. December 19, 2008). However, HTC was *not* a party to the Texas Action. **HTC is entitled to its own discovery and claims construction proceeding.** The participation of HTC's *counsel* in other suits is immaterial to HTC's right to discovery in this action. Further, the '591 patent was not at issue in the Texas action." Order Granting HTC's Motion to Stay (Document No. 29) at 4. (bolding added; italics in original).

Term	Claims Containing Term	HTC's Proposed Construction	DataQuill's Proposed Construction
"reading sensor"	<p><b>'304 Patent</b>  <u>Independent</u>  62, 64, 78, 80, 81, 82, 83, 85, 86, 94, 95, 97, 98, 100, 101, 103, 104, 107, 109, 113, 115</p> <p><u>Dependent</u>  65, 76, 77, 9, 12, 40, 41, 44, 47</p> <p><b>'591 Patent</b>  <u>Dependent</u>  62<sup>5</sup></p>	a structure capable of detecting a stimulus, visually, magnetically, or by locational movement of the structure across a surface, and that transmits a resulting signal for use by a controller to determine the data or commands represented by the stimulus.	<p>a structure capable of detecting and reporting data;</p> <p>Alternatively: a sensor capable of detecting and reporting commands or data.</p>

With the exception of claim 32 of the '591 patent and claims dependent therefrom, all of the asserted claims in this case call for some type of sensor. An issue central to this case is the difference between a "sensor" and a "reading sensor." Under the basic principles of claim construction and as a matter of common sense, there must be a difference between the meanings of these two terms – and there is.

Claims 47, 61, and 62 of the '591 patent call for a **sensor**. Claims 9, 12, 40, 41, 44, 47, 62, 64, 65, 76, 77, 78, 80, 81, 82, 83, 85, 86, 94, 95, 97, 98, 100, 101, 103, 104, 107, 109, 113, and 115 of the '304 patent and claim 62 of the '591 patent call for a **reading sensor**. Thus, claim 62 of the '591 patent calls for **both** a **sensor** and a (separate) **reading sensor**, further emphasizing the critical difference between a sensor and a reading sensor.

As a starting point, a **sensor** should be construed to mean "a structure capable of detecting a stimulus, such as light, temperature, radiation level, or the like, and that transmits a resulting signal," when read in the context of the claims in which it appears. While DataQuill's initial position is that the claim should be construed to have its plain meaning, DataQuill's alternative definition is the same as HTC's proposed construction. Accordingly, HTC contends

<sup>5</sup> Each instance of "reading sensor" appearing in the claims should be construed consistently. Thus, while the Parties have attempted to highlight all instances of "reading sensor" on the Joint Claim Construction Chart (document 61) and Joint Claim Construction Worksheet (document 62), should a "reading sensor" term not appear bolded in the Chart or Worksheet, or not appear in this listing, such "reading sensor" term should nonetheless be construed as set forth herein.

1 that the Court should adopt the agreed construction for this term. *See, e.g.,* Merriam-Webster’s  
 2 Collegiate Dictionary (10th Ed. 1993) (Ex. C. [133]): “a device that responds to a physical  
 3 stimulus (as heat, light, sound, pressure, magnetism, or a particular motion) and transmits a  
 4 resulting impulse (as for measurement or operating a control).”

5 In contrast to a “**sensor**,” a “**reading sensor**” should be construed to mean a structure  
 6 capable of detecting a stimulus, visually, magnetically, or by locational movement of the  
 7 structure across a surface, and that transmits a resulting signal for use by a controller to  
 8 determine the data or commands represented by a stimulus.” This definition differs from the  
 9 definition of “sensor” in that it describes *a more specific type of sensor* – one that “reads.” This  
 10 construction is thoroughly supported by the intrinsic record – by usage in the language of the  
 11 claims, by disclosure in the patent specification, and by DataQuill’s own arguments during  
 12 patent prosecution.

13 Starting with the language of the claims themselves, in each instance where a claim  
 14 contains the term “reading sensor,” the reading sensor generates outputs referred to as “input  
 15 signals” that serve as inputs to a **controller** that will “**process**” the input signals. For example,  
 16 ‘304 patent claim 62 recites (emphasis added), in part:

\* \* \*

18 a controller coupled to said reading sensor to receive and **process said input**  
 19 **signals;**  
 20 said controller coupled to a communications inter-face to selectively control  
 21 transmission over said communications interface of **command and/or data**  
 22 **signals as determined by said input signals processed by said controller**

\* \* \*

23 Thus, the combination of the terms “reading sensor” and “process said input signals” in the  
 24 claims is not coincidence. These two terms and the functionalities that they claim work in  
 25 tandem to implement the “reading” of data or commands. The construction of “process said  
 26 input signals” is discussed in the next section, below.

27 Each of the claims calling for a “reading sensor” makes it clear that the reading sensor is  
 28 either “responsive to commands and/or sensed commands and data” or used “for sensing  
 commands and/or data.” This language makes it clear that the reading sensor serves a particular

purpose – to sense or respond to commands and data. In order to sense or respond to commands, the reading sensor must be able to *read* those commands or data. This is more than simply sensing a generic, external stimulus – it is *reading* and responding to commands and data that the reading sensor senses. Similarly, other claims call for a sensor that is operable “for sensing user commands or data” or “to sense and capture data.”

Turning to the patent specification, the very purpose of the reading sensor is to eliminate the need for keyboard keys for entering commands or data: “By arranging that the reading sensor can be used for the input of commands for controlling the hand held unit, the number of user input means (e.g., keys) can be kept to a minimum, reducing the possibility of inadvertent operation.” ‘304 patent, 3:28-31. The patent further explains:

The hand held data entry unit may comprise a reading head including a reading sensor for producing input signals, wherein the reading sensor traces movements of the reading head and wherein the controller is responsive to signals from the sensor representative of the movements for identifying characters traced by the reading head as captured data. In this manner data entry can be made in an advantageous manner by tracing out the characters of the data to be input or characters representing commands for controlling the operations of the data entry system.

‘304 patent, 3:56-65.

Again, such a sensor must be able to capture meaningful information that is *understandable* to the data entry device and not just sense information or stimuli generally. The patent explains that the combination of the reading sensor and a processor enable the data entry device to determine what has been read by the patent. ‘304 patent, 9:66-10:34. Examples in the patent are devices that can read bar codes, dot codes, magnetic strips, graphical representations and/or alpha-numeric characters visually, magnetically, or by locational movement of the reading head. ‘304 patent, 5:18-43, 13:36-48; ‘591 patent 12:1-7, 5:30-37, 13:14-27 (bar code and/or dot code readers); ‘591 patent 4:10-19 and 14:15-31, ‘304 patent 3:56-65 and 13:52-14:1 (tracing motion detector); ‘304 patent 13:36-48 (magnetic strip reader); and ‘304 patent 5:35-47, 17:52-58 (camera having character or image recognition capability).

DataQuill’s very own arguments during reexamination of the ‘304 patent admitted the difference between a sensor (such as a camera), and a reading sensor. DataQuill argued a



1 distinction between its claimed reading sensor and the sensor (camera) disclosed in the prior art  
2 Martinez reference (Ex. I [2326-2333]):

3  
4 It is respectfully submitted that Martinez does not disclose the limitations of  
5 element 1.1 [a reading sensor responsive to *commands* and/or *sensed commands*  
6 and data to produce input signals"]. Element 1.1 requires that a "reading sensor"  
7 must be "responsive to *commands* and/or *sensed commands* ... to produce input  
8 signals." *Martinez* does not disclose a camera that is responsive to *commands* or  
to *sensed commands*. Instead, at the cited passage, *Martinez* discloses a video  
camera "to view the user or a customer, and to generate a video signal." (*Martinez*  
Col. 5:49-6:2.). For at least the above reasons, Martinez does not anticipate  
independent Claims 1-3 and their dependent claims.

9 June 2, 2008 Response to Office Action (Ex. G [1486-1653]) in reexamination of '304 patent, at  
10 p. 78 (emphasis in original) (Ex. G [1527]). DataQuill continued:

11 In any event, it is apparent why Requester did not cite any support for its  
12 assertion. Martinez does not provide such disclosure. For instance, adopted  
13 Exhibit S, relies upon *Martinez's* camera to meet the "reading sensor"  
14 requirement of prior Elements 26.1, 27.1, 28.1, 29.1 and 30.1. The Martinez's  
camera, however, is only used to send an image of a customer "to a remote  
15 television screen" (Col. 6/ll. 50-52) as a way to verify that person's identity.  
16 *Martinez*, of course, has no disclosure or teaching at all of using its camera to  
select from a plurality of items that have information programmed into storage, as  
17 required by elements 26.2 and 29.2 [rewritable storage programmable with  
information relating to a plurality of items, user selectable by means of said  
reading sensor]. A reading sensor of *Martinez* must meet this limitation in these  
Elements and *Martinez* camera certainly does not.

18 *Id.* at 86-87 (emphasis in original) (Ex. G [1535-1536]).

19 Importantly, the USPTO accepted and agreed with DataQuill's arguments in allowing the  
20 reexamined claims of the '304 patent, calling for a reading sensor, over the Martinez reference  
21 and its disclosure of a camera:

22 Patent owner argues on page 78 that Martinez fails to teach a reading sensor  
23 'responsive' to commands and/or sensed commands. Instead, it is argued,  
24 Martinez teaches a convention video camera 'to view the user or a customer, and  
to generate a video signal.' The remaining independent claims rejected under  
25 Martinez, specifically claims 26-30, similarly recite a reading sensor responsive to  
sensed command. See pages 86-88 of the Amendment. The patent owner's  
26 arguments above have been duly considered and are deemed persuasive.  
Although the claim language could broadly read upon Martinez (e.g., reading a  
27 video camera as the reading sensor responsive to commands), such an  
interpretation would not be reasonable consistent with the specification of the  
28 patent under reexamination. Thus, Martinez appears unsuitable as both an



anticipatory reference and as a base reference in an obviousness inquiry. Thus, all rejections based upon Martinez are withdrawn and not repeated in the present Office action.

June 25, 2009 Office Action (Ex. G at [1677]) at 22.

## 2. “Process said input signals”

Term	Claims Containing Term	HTC’s Proposed Construction	DataQuill’s Proposed Construction
“process said input signals”	‘304 patent <u>Independent</u> 62, 64, 78, 80, 81, 82, 83, 85, 86, 94, 95, 97, 98, 100, 101, 103, 104, 107, 109, 113, 115	perform operations on the input signals, including, but not limited to determining the content represented by the stimulus detected by the reading sensor	Means what it says and no elaboration is needed.  Alternatively: subject the input signals to examination or analysis.  Alternatively: perform any operation or combination of operations on the input signals.  Alternatively: manipulate the input signals.

As an example, ‘304 patent claim 62 calls in part for:

62. A data entry device for use in a data entry system, said data entry device comprising:  
a **reading sensor** responsive to commands and/or sensed commands and data **to produce input signals**;  
a controller coupled to said reading sensor to receive and **process said input signals**;  
said controller coupled to a communications interface to selectively control transmission over said communications interface of command and/or data signals **as determined by said input signals processed by said controller**;

\* \* \*

‘304 patent claim 62 (emphasis added). Claim 62 is exemplary of the use of the term “reading sensor” in conjunction with the term “process said input signals.” The data entry device contains a reading sensor. In response to commands or data input to the reading sensor, the reading sensor produces input signals, which, in turn, function as inputs to a controller. Thus, the controller is coupled to the reading sensor on the one hand (receiving input signals from the

1 reading sensor) and is coupled to a communications interface on the other hand. It is clear from  
2 context that the controller takes the input signals (generated by the reading sensor) and in turn  
3 controls the “transmission of command and/or data signals as determined by said input signals  
4 processed by said controller.” Thus, the controller determines what those command and/or data  
5 signals are. How? By **processing** them. That determination of the content is a part of what is  
6 done by a controller in conjunction with a reading sensor (as opposed to simply a sensor). *See,*  
7 *e.g.*, ‘304 patent 9:14-20 (“The processor is programmed by means of control programs and data  
8 stored in the ROM 76 and, in use, in the RAM 78, to receive signals from the reading head 14, to  
9 interpret those signals into derived data therefrom which are displayed on the display 20 and  
10 stored in the RAM 78 for subsequent transmission via the optical interface as will be described in  
11 more detail below.”)

12 In order for the reading sensor to sense commands, the data entry device ultimately must  
13 be able to interpret the information sensed by the reading sensor as, in fact, constituting  
14 commands or data. According to the claim and the patent’s disclosure, the reading sensor reads  
15 commands and data and generates an input signal that is input to the controller. ‘304 patent,  
16 4:20-23, 8:36-58; FIG. 3. It is the controller that interprets these input signals as commands or  
17 data. ‘304 patent, 14:40-43. The patent also discusses this aspect of the device as a “processor”  
18 implemented with a microprocessor or Application Specific Integrated Circuit (ASIC). ‘304  
19 patent, 8:36-63, 15:11-17, 9:14-15, FIG. 3 (processor 74), FIG. 11 (ASIC 150).

20 None of DataQuill’s multiple stated positions captures this aspect of processing the input  
21 signals generated by the reading sensor to determine the data or command content of what the  
22 reading sensor reads. Aside from DataQuill’s initial position, which is that the Court need not  
23 construe the term, each of DataQuill’s proposed constructions is completely generic and ignores  
24 what should be the Court’s first consideration – the contextual language of the claims  
25 themselves, including the importance of the linkage between the reading sensor and the  
26 operations that the controller must perform on the signals generated by the reading sensor in  
27 order to determine their content as data or commands.  
28

## 3. “Camera” terms

Term	Claims containing the term	HTC’s Proposed Construction	DataQuill’s Proposed Construction
“camera”	<b>‘304 Patent Dependent</b> 13, 45	a device that can capture an image, which could be an image of one or more characters, and recognize the contents of the image when used in combination with a processor which may execute image recognition software	means what it says and no elaboration is needed
	<b>‘304 Patent Dependent</b> 73*  <b>‘591 Patent Independent</b> 35*, 62*  *Revised from Joint Claim Construction Worksheet	a device that can capture an image	means what it says and no elaboration is needed

Claim 13 of the ‘304 patent is dependent upon claim 12 of the ‘304 patent, which is dependent upon a number of claims, including claim 80, for example. Among other things, claim 80 calls for a reading sensor. *See* ‘304 patent reexamination certificate. Claim 12 adds the limitation of “wherein said reading sensor is a motion detector or a scanning device.” Claim 13 adds the limitation that “wherein said scanning device is a camera.” *See* original ‘304 patent. Thus, through claim dependencies, the type of camera that would be necessary to constitute a scanning device that constitutes a reading sensor would be one that would have to have the ability to read, i.e., recognize the contents of the data it is sensing. Thus, the requirements for a reading sensor are implicated (as the claim essentially claims the camera as a form of reading sensor). The only types of cameras disclosed in the patent specification as reading sensors are those that can capture an image and recognize the contents of the image when used in combination with a processor executing image recognition software. ‘304 patent 5:35-43, 17:52-58. The patent explains: “As an alternative to the use of bar codes, other *data representations*

1 could be used. Indeed, if the data entry device is provided with a reading sensor in the form of a  
2 camera or other scanning sensor rather than a bar code reader, and the data entry device is  
3 provided with character or image recognition logic, graphical or alphanumeric data  
4 representations can be captured directly. One application of an embodiment of the pen with a  
5 camera head as its sensor could be for fingerprint recognition.” ‘591 patent, 5:55-63, ‘304  
6 patent, 5:35-43) (emphasis added). The preceding excerpt indicates that the camera is intended  
7 to capture data *representations*. The idea of a representation is that it stands for something else.  
8 In order to determine what is being represented, the data entry device must be able to interpret  
9 the captured data.

10 Claim 45 depends from claim 44. Claim 44 depends from a number of claims, including  
11 claim 78, for example. Among other things, claim 78 calls for a reading sensor. Claim 44 adds  
12 the limitation of “wherein a said reading sensor is a motion detector or a scanning device.”  
13 Claim 45 adds the limitation of “wherein said scanning device is a camera.” Thus, the same  
14 definition of camera applies for claim 45 as for claim 13.

15 Claim 73 of the ‘304 patent is slightly different. Claim 73 is dependent upon claim 64.  
16 Claim 64 of the ‘304 patent calls for a reading sensor, among other elements and limitations.  
17 Claim 73 includes the further limitations of “wherein said hand held device also comprises:  
18 camera coupled to said controller, and wherein, (i) said camera is operable to sense and capture  
19 data relating to a plurality of selectable items for storage of said data by said solid state memory  
20 for later user access; and (ii) said network interface is operable to transmit data captured by said  
21 camera from said storage, via a said cellular telephone network; and (iii) said data is made of one  
22 or more images...” Unasserted claim 74 adds the further limitation to claim 73 that “said camera  
23 is operable to sense and capture user visible codes.” Thus, in addition to requiring a reading  
24 sensor, claim 73 requires a camera that sense and captures data relating to a plurality of  
25 selectable items. The patent claim provides no explanation as to how the data is or can be related  
26 to the plurality of selectable items through operation of the device. Accordingly, to the extent  
27 that the device is intended to make such a relationship, it must have the capability to comprehend  
28 the data that it senses. To the extent the device is not intended to make such a relationship, the

camera need not have that capability and the definition of “a device that can capture an image” would apply.

Turning to the ‘591 patent, claim 35 depends from claim 32. Claim 32 does not require a reading sensor, but instead requires a touch sensitive screen, by contrast. The touch sensitive screen is used by a user for selecting user selectable items. Claim 35 adds the further limitation that the “portable hand held computer comprises a sensor operable to sense and capture data wherein said sensor is a camera.” Thus, the definition of “a device that can capture an image” is appropriate.

Claim 62 of the ‘591 patent calls for a reading sensor and, in addition, a “sensor operable to sense and capture data wherein said sensor is a camera.” Claim 62 makes no further use of data sensed and captured by the camera, so, in that regard, it is unclear what requirements the camera must meet. Accordingly, the same definition of “camera” as for claim 35 would apply.

Thus, while the general rule is that claim terms should be construed consistently throughout the patent claims, there may be reasons why a particular term may have different meanings in different claims, as is the case here – because the patentee has used the term inconsistently throughout the claims. The present situation with the term “camera” is such a case. Patentee has used the term camera in some ways in some claims and in other ways in other claims. Thus, for ‘304 patent claims 13 and 45, “camera” should be construed as “a device that can capture an image, which could be an image of one or more characters, and recognize the contents of the image when used in combination with a processor which may execute image recognition software,” and for ‘304 patent claim 73 and ‘591 patent claims 35 and 62, “camera” should be construed as “a device that can capture an image.”

#### 4. “Carrier” terms

Term	Claims containing the term	HTC’s Proposed Construction	DataQuill’s Proposed Construction
“carrier”	‘304 patent <u>Independent</u> 100, 101 <u>Dependent</u> 20, 52, 53, 55	a physical medium, separate from and external to the data entry device that carries coded data recognizable by the data entry device as	a medium which carries one or more data and/or command code, character, image, or graphical or alphanumeric data representation;

		corresponding to data or commands	Alternatively: a medium that carries one or more data and/or command codes
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As used in the ‘304 patent, a “carrier” is an external object that carries a plurality of data or command codes that can be read by a reading sensor. For example, in claims 100 and 101, the “carrier carries a plurality of codes, each for a respective one of a plurality of natural language and/or numeric characters and a plurality of commands for controlling operation of said data entry device or a merchandising system, each code being associated with a visual representation of the corresponding natural language or numeric character or command and/or of a graphical representation thereof, wherein said codes are bar and/or dot codes and/or other product identifications.”

As discussed above, one of the primary objectives of the patent is to eliminate the need for a keyboard as the instrumentality for inputting data and commands. ‘304 patent, 5:18-34. The patent purports to eliminate the need for a keyboard by substituting codes on an external carrier for the user’s selection instead. *Id.*; ‘304 patent, 9:60-65; Fig. 6. The patent explains that “the carrier is preferably in the form of a sheet of material,” ‘304 patent, 5:52-53, or a “control card,” ‘304 patent, 9:60-65, or a “command sheet.” ‘304 patent, 11:13-16. The patent further explains that the codes even “could be arranged in the in the manner of a standard typewriter keyboard layout.” ‘304 patent, 5:53-56. The operator of the data entry device is able to use the data entry device’s reading sensor, such as a bar code scanner to read codes from the carrier in order to input data or commands of the user’s selection. ‘304 patent, 5:18-43. It is clear from the wording of the claims and the description in the patent that, because the user is using the reading sensor to read data and commands from the carrier, the carrier necessarily must be external to and separate from the data entry device.

To be complete, it is necessary to address claim 55 of the ‘304 patent with regard to its use of the term carrier: “55. A data entry system according to claim 53, wherein said carrier comprises a display.” Given the discussion in the patent specification of the role that a carrier plays in the operation of the claimed data entry system (for example, to be scanned by a bar code scanner, etc.) makes sense only if the referenced “a display” is a display in addition to the

display screen of the device. See each of asserted claims 78, 81, 107, 108, 109, 112-115, and 118 from which claim 53 depends.

This interpretation is consistent with the language of the patent claims in that claim 55 does *not* say “wherein said carrier comprises the display screen.” “A display” is a different term from “a display screen.” Moreover, claim 55 does not precede “display” with the word “the,” which would reference an antecedent term. Instead, claim 55 precedes “display” with “a.” The indefinite article “a” does not make reference to an antecedent term.

This interpretation also is consistent with the patent disclosure as well:

It enables the user to make shopping selections from a catalogue or from a series of options displayed on a television screen from the comfort of his or her home without the need to connect the device to a conventional telephone network. A hand held unit including a wireless telephone network interface such as a cellular network interface finds particular application where the user of the system is travelling from place to place and may need to perform data entry functions when they are far from a conventional wired telephone network socket.

‘304 patent, 4:62-5:10

## 5. “Up to date” and “Updating” terms

Term	Claims containing the term	HTC’s Proposed Definition	DataQuill’s Proposed Construction
<i>downloading of information from a remote processing center as required for updating information previously stored in said data entry device;</i>	<b>‘304 patent Independent</b> 64, 80, 82, 83, 85, 86, 94, 95, 97, 98, 100, 101, 103, 104	transferring from the remote processing center only information that has changed from the information most recently stored in the data entry device	means what it says and no elaboration is needed

Each of independent claims 64, 80, 82, 83, 85, 86, 94, 95, 97, 98, 100, 101, 103, and 104 of the ‘304 patent includes the limitation of “downloading of information from a remote processing center as required for updating information previously stored” in the data entry device.<sup>6</sup> The ‘304 patent specification describes the process of initially storing, in the data entry

<sup>6</sup> For brevity, HTC will focus on this term for construction. However, a total of thirteen (13) terms including this “update” or “up to date” limitation appear on the Parties Joint Claim Construction Worksheet. For the convenience of the Court, HTC has provided a table in Tab 2 with all of the terms that include the “update” or “up to date”



1 device, description information from one or more merchandising catalogs. *See* ‘304 patent,  
2 10:35-39. The complete catalog data can be downloaded over the telecommunications interface.  
3 ‘304 patent, 16:64-17:7 (“In the preferred embodiments described above, catalogue data is down-  
4 loaded into the pen from a remote processing system by telephone, over the telecommunications  
5 interface.”). Or, as an alternative to downloading, a complete catalog into the pen via the  
6 telecommunication interface, other data entry means could be used to get the catalog  
7 information into the pen. Then the telecommunication interface is used only for updating the  
8 data in the pen. *See* ‘304 patent, 16:64-17:7 (describing the telecommunication interface being  
9 used only for updating the stored data). “For example, the pen and/or the base unit as  
10 appropriate could be provided with a socket or connector or reader for a memory device (such as  
11 a plug-in ROM, a smart card, etc.).” ‘304 patent, 17:4-7.

12       Regardless of how the original catalog data is stored in the device, once the original  
13 catalog data is stored in the device, then, information related to a selected item, for example, may  
14 be updated by sending only the information that has changed -- and not information that has not  
15 changed -- from the remote processing center via the telecommunication interface. *See* ‘304  
16 patent, 10:49-61 (“However, through the use of rewritable memory and control logic enabling  
17 the memory to be updated using data downloaded from the remote processing center, it is  
18 possible to keep the pen’s memory up to date on a full list of merchandisable items, including  
19 product description, availability, price, etc. Then, upon reading a bar code relating to an item  
20 stored in memory, the display on the pen can indicate a description of the item corresponding to  
21 the code read, its availability, and price. If the code read [by a reading sensor] is not recognized,  
22 for example, the pen can be programmed automatically to call up the remote processing center to  
23 check on whether an update of the pen’s storage is needed when the pen is replaced in the base  
24 unit.”).

25       Each time information in the pen becomes obsolete and needs to be updated, the entire  
26 catalog of information is *not* retransmitted to the pen according the ‘304 patent: ***only*** the

27  
28  

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limitation discussed in this section. For the reasons set forth in this section, the proper construction for each of these  
thirteen (13) terms is that proposed by HTC, as shown in Tab 2.



information that has *changed* from the information previously stored in memory is transmitted by the remote processing center and downloaded into the pen to update the information in the pen. Thus, in light of the ‘304 specification, the proper construction of “downloading of information from a remote processing center as required for updating information previously stored” is “transferring from the remote processing center only information that has changed from the information most recently stored in the data entry device.”<sup>7</sup>

The file history strongly supports HTC’s proposed construction. “[T]he prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005) (en banc). “[P]rosecution disclaimer may arise from disavowals made during the prosecution of ancestor patent applications.” *Ormco Corp. v. Align Tech., Inc.*, 498 F.3d 1307, 1314-1315 (Fed. Cir. 2007); *Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1333 (Fed. Cir. 2003). Where the patentee has unequivocally disavowed a certain meaning to obtain his or her patent, the doctrine of prosecution disclaimer attaches and narrows the ordinary meaning of the claim congruent with the scope of the surrender. *See Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003) (and cases cited therein). Further, when the application of prosecution disclaimer involves statements from prosecution of a familial patent relating to the same subject matter as the claim language at issue in the patent being construed, those statements in the familial application are relevant in construing the claims at issue. *See, e.g., Wang Lab., Inc. v. Am. Online, Inc.*, 197 F.3d 1377, 1384 (Fed. Cir. 1999); *Jonsson v. Stanley Works*, 903 F.2d 812, 818 (Fed. Cir. 1990).<sup>8</sup> In this

<sup>7</sup> While DataQuill has not proposed an alternative construction, DataQuill seems to imply that a construction broader than that proposed by HTC is proper for these “updating” terms. If that were the case, then, as described herein, DataQuill disclaimed any broader coverage for these “updating” terms during prosecution of the patents-in-suit.

<sup>8</sup> In this case, the specifications of the ‘304 patent, the intervening application 09/548,565, and the ‘591 patent are substantially identical. Thus, the prosecution history of the claims of each of these applications is relevant in construing the claims of the patents-in-suit. The same terms appearing in claims of related applications are to be given the same construction. *See Abtox, Inc. v. Exitron Corp.*, 131 F.3d 1009, 1010 (Fed. Cir.), *modifying Abtox, Inc. v. Exitron Corp.*, 122 F.3d 1019 (Fed. Cir. 1997) (improper to construe the same term in related patents differently); *Jonsson v. Stanley Works*, 903 F.2d 812, 818 (Fed. Cir. 1990) (construction of the same term in related patent relevant to an understanding of that term in patent at issue).

1 case, and to show DataQuill's apparent proposed construction is incorrect, DataQuill clearly,  
2 unmistakably, and unequivocally disavowed claim scope.

3 As stated above, the application leading to the '304 patent (Application 08/619,682) was  
4 filed on May 23, 1996 as the U.S. National filing of PCT application PCT/GB94/02101 (filed  
5 September 27, 1994). In the prosecution of the application leading to the '304 patent, DataQuill  
6 filed a Preliminary Amendment on April 2, 1996, canceling the original claims of the PCT  
7 application filed September 27, 1994, and adding new claims 31-75. (Ex. D [191-199]). See  
8 April 2, 1996 Preliminary Amendment. Application claim 31 included, *inter alia*, the limitation  
9 of "said controller being responsive to a said command to cause downloading of information  
10 from said remote processing center as required for updating information previously stored in said  
11 rewritable storage for selectable items", hereinafter referred to as "the updating limitation." See  
12 Preliminary Amendment (Ex. D [191-199]) at 2 (Ex. D [192]).

13 In a First Office Action, the Examiner rejected application claims 31, 53, and others as  
14 anticipated by prior art U.S. Patent No. 4,850,009 to Zook (Ex. J [2334-2349], finding that Zook  
15 described a portable handset terminal with "the controller being responsive to commands to  
16 cause downloading of information from the remote processing center as required for updating  
17 information previously stored in the rewritable storage for selectable items (col. 2, lines 48-59;  
18 col. 4, lines 29-34; col. 6 lines 36-51; col. 7, lines 9-37)." See May 28, 1998 Office Action (Ex.  
19 D [640-652]) at pp. 3-4 [643-644]. The Examiner also rejected claims 76 as anticipated by  
20 Zook.<sup>9</sup>

21 In response, DataQuill amended and rewrote, in independent form as new claims, the  
22 claims to which the Examiner had objected previously. See Dec. 5, 1998 Response to Office  
23 Action Ex. D [699-718]) at p. 18 (stating that claims 76 and 77 were combined into claim 86,  
24 and application claims 76, 77, and 78 were combined into claim 87). On March 19, 1999, the  
25 Examiner rejected then pending claims 86 and 87, *inter alia*, under 35 U.S.C. § 102(e) based on  
26 U.S. Patent No. 5,334,824 to Martinez (Ex. I). See March 19, 1999 Office Action (Ex. D [725-  
27

28 <sup>9</sup> Claim 76 was added by a Second Preliminary Amendment (Ex. D [623-626]), and formed the basis of claim 1 and 2 as issued in the '304 patent, from which claims 64, 80, 82, 83, 85, 86, 94, 95, 97, 98, 100, 101, 103, 104 of the reexamined '304 patent are derived.

729]) at pp. 4-7. In Response, on August 16, 1999, DataQuill amended application claims 86 [issued claim 1 of the original ‘304 patent] and 87 [issued claim 2 of the original ‘304 patent] to add the further limitation of application claim 91: “and wherein said controller is responsive to a said command to cause downloading of information from a remote processing center as required for updating information previously stored in said data entry device,” described above, and the claims were allowed.<sup>10</sup> See August 16, 1999 Response to Office Action (Ex. D [754-768]) at 2 [756]; see also November 8, 1999 Notice of Allowability (Ex. D [876-878]).

DataQuill continued prosecuting the same family of claims by filing application No. 09/548,565 (“the ‘565 application”) on April 13, 2000, as a continuation of the application leading to the ‘304 patent. In the ‘565 application, DataQuill re-filed claims *identical* to those in the parent application that the Examiner had rejected in light of the Zook prior art reference, described above. See DataQuill’s April 13, 2000 preliminary amendment in ‘565 application (Ex. E [1031-1055]). In that preliminary amendment, DataQuill cancelled claims 1-30 and added claims 31-77, stating that claims 31-77 “correspond to claims 31-75 entered in the parent application 08/619,682 by amendment dated April 2, 1996; claims 76 and 77 are newly added claims. Consideration of these claims is requested, taking into account the following comments responding to grounds of rejection, particularly in respect of claims 31 and 53, included in the Office Action mailed May 28, 1998 in the parent application”.

To overcome the earlier prior art rejections of the identical pending claims (based upon the Zook prior art reference) made during the prosecution of the parent application, in the Preliminary Amendment filed in the ‘565 application, DataQuill elaborated that one of skill in the art would have understood that the “updating limitation” required that only information that had changed be downloaded – a feature that DataQuill argued was not disclosed in the prior art Zook reference:

[A]s the hand held unit only downloads information that has changed, the time taken to update the information in the rewritable storage is dramatically less than the time taken to update prior art devices where all the information stored in the

<sup>10</sup> This claims included the limitation that the wireless network was a cellular network, which the Examiner did not find in the prior art at the time. However, as evidenced by the reexamination proceedings, these claims were not patentable.

device is replaced with a complete new set of information. This is particularly advantageous when the invention is embodied in a mobile phone, for example, as use of expensive airtime (for which the user typically is charged) may be reduced.

April 13, 2000 Response to Office Action in '565 application, at 16-17 (emphasis in original) (Exhibit E [1046-1047]).

In the Office Action dated 28 May 1998 in the parent application, it is alleged that Claim 31 (identical to claim 31 presented by this amendment) lacked novelty under 35 USC 102 over US Patent No. 4,850,009 (to Zook et al), ... It is apparent from the above discussion that the Zook reference makes absolutely no reference whatsoever to updating information previously stored in rewritable memory of the hand held unit for selectable items, and furthermore that no reference is made to a controller of the hand held unit "being responsive to a said command to cause downloading of information from said remote processing center as required for updating information previously stored in said rewritable storage for selectable items" as set forth in claim 31.

*Id.* at 20 (Ex. E [1050]). *See also id.* at 23-25 (distinguishing application claim 76 from Zook). DataQuill concluded:

In view of the above comments, it is respectfully submitted that Claims 31, 53, and 76 are novel over the Zook reference which also fails in any way to suggest the combination of features set forth in claim 31 or claim 53 or claim 76 which are therefore not rendered unpatentable over Zook. Claims 32 to 52, 54 to 75 and 77 add subject matter to the features of their respective parent claims 31, 53, and 76 and thus are further distinguished over Zook. Further, none of the other references relied upon by the Examiner disclose or suggest the particular combinations of features and functionality recited in any of claims 31 - 77.

*Id.* at 25 (emphasis in original) (Ex. E [1055]).

In a December 16, 2003 Office Action (Ex. E [1196-1208]), and after considering DataQuill's traverse in an attempt to distinguish the claims from the prior art in its April 13, 2000 Response, the Examiner rejected all pending claims, except for four dependent claims -- 66, 68, 72, and 73 based on the Koenck reference, U.S. Patent No. 5,410,141 (Ex. K [2350-2392]). *See* December 16, 2003 Office Action in '565 application file history (Ex. E [1196-1208]), at 1. It was only after the Examiner relied on the statements mentioned above did DataQuill attempt to withdraw its disclaimed subject matter.<sup>11</sup> DataQuill's attempted disavowals

<sup>11</sup> *See* June 15, 2004 Amendment in the '565 application file history (Ex. E [1233-1236]), at 3 (Remark: "Applicants are not responding to the rejections [of all pending claims] in the outstanding Office Action, as they wish to allow this application to go abandoned in favor of a continuation application being filed herewith to ensure that information that has come to Applicants' attention is made of record. Applicants also withdraw and disavow reliance on their arguments in regard to Claims 31 and 76 made in the paper filed on April 13, 2000. Applicants further note that such arguments were not accepted by the Examiner."). HTC notes that the file history indicates the Examiner accepted Applicants' traverse, as explained above. *See also* June 15, 2004, Preliminary Amendment to Application 10/869,215 leading to the '591 patent (Ex. F [1262-1272]), at 3 ("Applicants also withdraw and disavow reliance on their arguments in regard to Claims 31 and 76 made in the paper filed April 13, 2000 in parent

1 were ineffective, because DataQuill's statement that it disavowed a prior argument in the  
2 prosecution history was not sufficiently clear to inform the examiner that the previous  
3 disclaimer, and the prior art that it was made to avoid, may need to be re-visited. *See Hakim v.*  
4 *Cannon Avent Group, PLC*, 479 F.3d 1313, 1317-1318 (Fed. Cir. 2007). *See also Springs*  
5 *Window Fashions LP v. Novo Indus., L.P.*, 323 F.3d 989, 995 (Fed. Cir. 2003) ("The public  
6 notice function of a patent and its prosecution history requires that a patentee be held to what he  
7 declares during the prosecution of his patent.").

8 DataQuill failed to otherwise respond to the Office Action and abandoned the '565  
9 application but noted that it was filing a continuation application to pursue claims which  
10 included claims 66, 68, 72, and 73 rewritten in independent form. (Ex. E [1233-1236]).  
11 DataQuill filed the continuation application leading to the '591 patent. Claims 1-4 of the original  
12 application leading to the '591 patent included the limitations of claim 66, 68, 72, and 73 of the  
13 claim of the '565 application. During the prosecution of the application leading to the '591  
14 patent, claims 1 and 2 were rejected, then cancelled by DataQuill, and the original '591 patent  
15 issued. (Ex. B [[0061]]).

16 These extensive passages showing DataQuill's clear and unmistakable disclaimer of  
17 subject matter (from the apparent construction that DataQuill asserts) establish that these terms  
18 concerning the "updating" limitations require downloading of only information that has *changed*.  
19 As such, this Court should adopt HTC's proposed constructions, which are completely consistent  
20 with those positions that DataQuill took and the USPTO accepted during prosecution of the  
21 patents-in-suit. It is noted that the same analysis described above applies to the remainder of the  
22 terms found in Tab 2 attached to the Declaration in Support of HTC's Motion, filed currently, for  
23 the same reasons as discussed in this section: each of the terms includes the "updating" or "up to  
24 date" limitation in the same context described herein.

25  
26  
27 application serial number 09/548,565. Applicants further note that such arguments were not accepted by the  
28 Examiner."). Further, DataQuill's statement that "Applicants further note that such arguments were not accepted by  
the Examiner" were incorrect, and misleading at best. And DataQuill also failed to provide a sufficiently clear  
statement in either of the reexamination proceedings for the patents-in-suit to avoid the effects of the disclaimer.

## 6. “Means for Displaying” Terms

	Term	Claims containing the term	HTC’s Proposed Construction	DataQuill’s Proposed Construction
1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
26	27	28	29	30
31	32	33	34	35
36	37	38	39	40
41	42	43	44	45
46	47	48	49	50
51	52	53	54	55
56	57	58	59	60
61	62	63	64	65
66	67	68	69	70
71	72	73	74	75
76	77	78	79	80
81	82	83	84	85
86	87	88	89	90
91	92	93	94	95
96	97	98	99	100
101	102	103	104	105
106	107	108	109	110
111	112	113	114	115
116	117	118	119	120
121	122	123	124	125
126	127	128	129	130
131	132	133	134	135
136	137	138	139	140
141	142	143	144	145
146	147	148	149	150
151	152	153	154	155
156	157	158	159	160
161	162	163	164	165
166	167	168	169	170
171	172	173	174	175
176	177	178	179	180
181	182	183	184	185
186	187	188	189	190
191	192	193	194	195
196	197	198	199	200
201	202	203	204	205
206	207	208	209	210
211	212	213	214	215
216	217	218	219	220
221	222	223	224	225
226	227	228	229	230
231	232	233	234	235
236	237	238	239	240
241	242	243	244	245
246	247	248	249	250
251	252	253	254	255
256	257	258	259	260
261	262	263	264	265
266	267	268	269	270
271	272	273	274	275
276	277	278	279	280
281	282	283	284	285
286	287	288	289	290
291	292	293	294	295
296	297	298	299	300
301	302	303	304	305
306	307	308	309	310
311	312	313	314	315
316	317	318	319	320
321	322	323	324	325
326	327	328	329	330
331	332	333	334	335
336	337	338	339	340
341	342	343	344	345
346	347	348	349	350
351	352	353	354	355
356	357	358	359	360
361	362	363	364	365
366	367	368	369	370
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376	377	378	379	380
381	382	383	384	385
386	387	388	389	390
391	392	393	394	395
396	397	398	399	400
401	402	403	404	405
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411	412	413	414	415
416	417	418	419	420
421	422	423	424	425
426	427	428	429	430
431	432	433	434	435
436	437	438	439	440
441	442	443	444	445
446	447	448	449	450
451	452	453	454	455
456	457	458	459	460
461	462	463	464	465
466	467	468	469	470
471	472	473	474	475
476	477	478	479	480
481	482	483	484	485
486	487	488	489	490
491	492	493	494	495
496	497	498	499	500
501	502	503	504	505
506	507	508	509	510
511	512	513	514	515
516	517	518	519	520
521	522	523	524	525
526	527	528	529	530
531	532	533	534	535
536	537	538	539	540
541	542	543	544	545
546	547	548	549	550
551	552	553	554	555
556	557	558	559	560
561	562	563	564	565
566	567	568	569	570
571	572	573	574	575
576	577	578	579	580
581	582	583	584	585
586	587	588	589	590
591	592	593	594	595
596	597	598	599	600
601	602	603	604	605
606	607	608	609	610
611	612	613	614	615
616	617	618	619	620
621	622	623	624	625
626	627	628	629	630
631	632	633	634	635
636	637	638	639	640
641	642	643	644	645
646	647	648	649	650
651	652	653	654	655
656	657	658	659	660
661	662	663	664	665
666	667	668	669	670
671	672	673	674	675
676	677	678	679	680
681	682	683	684	685
686	687	688	689	690
691	692	693	694	695
696	697	698	699	700
701	702	703	704	705
706	707	708	709	710
711	712	713	714	715
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721	722	723	724	725
726	727	728	729	730
731	732	733	734	735
736	737	738	739	740
741	742	743	744	745
746	747	748	749	750
751	752	753	754	755
756	757	758	759	760
761	762	763	764	765
766	767	768	769	770
771	772	773	774	775
776	777	778	779	780
781	782	783	784	785
786	787	788	789	790
791	792	793	794	795
796	797	798	799	800
801	802	803	804	805
806	807	808	809	810
811	812	813	814	815
816	817	818	819	820
821	822	823	824	825
826	827	828	829	830
831	832	833	834	835
836	837	838	839	840
841	842	843	844	845
846	847	848	849	850
851	852	853	854	855
856	857	858	859	860
861	862	863	864	865
866	867	868	869	870
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876	877	878	879	880
881	882	883	884	885
886	887	888	889	890
891	892	893	894	895
896	897	898	899	900
901	902	903	904	905
906	907	908	909	910
911	912	913	914	915
916	917	918	919	920
921	922	923	924	925
926	927	928	929	930
931	932	933	934	935
936	937	938	939	940
941	942	943	944	945
946	947	948	949	950
951	952	953	954	955
956	957	958	959	960
961	962	963	964	965
966	967	968	969	970
971	972	973	974	975
976	977	978	979	980
981	982	983	984	985
986	987	988	989	990
991	992	993	994	995
996	997	998	999	1000

The Parties agree that each of the above is a means plus function term to be construed pursuant to 35 U.S.C. § 112 ¶ 6.

Regarding the first term, each of independent claims 100 and 101 and dependent claims 20, 52, and 53 of the ‘304 patent calls for a “means for displaying a plurality of selectable items.” Because this phrase uses the terms “means for” without recited a structure, 35 U.S.C. § 112 ¶ 6 is invoked. *See Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1375 (Fed. Cir. 2003). The claimed function is “displaying a plurality of selectable items.” The following structures perform the claimed function of displaying a plurality of selectable items: (1) the display 20 (see ‘304 patent, Figure 10); a display screen 20 (see ‘304 patent, 2:13-30 and 6:54-7:10 ), or a touch



1 sensitive screen 90 ('304 patent, Figure 8 and 12:65-13:17, showing touch sensitive screen 90).  
2 Therefore, the proper construction of this term is a display, a display screen, or a touch sensitive  
3 screen, and equivalents thereof. *See* 35 U.S.C. § 112 ¶ 6.

4       Regarding the second means-plus-function term, independent claims 107 and 109 of the  
5 '304 patent include the limitation of "additionally comprising as well as or instead of said  
6 display screen, and separate from said hand holdable unit, means for displaying a selectable item  
7 with associated data sources for user selection of an item by operation of said hand holdable  
8 unit." This phrase includes the term "means for displaying a selectable item with associated data  
9 sources for user selection of an item by operation of said hand holdable unit," which recites a  
10 function without providing the requisite structure, invoking 35 U.S.C. § 112 ¶ 6. The claimed  
11 function of this term is displaying a selectable item with associated data sources for user  
12 selection of an item by operation of said hand holdable unit. Additionally, the term requires that  
13 the structure is "as well as or instead of said display screen and separate from the hand holdable  
14 unit."

15       The structure described in the specification of the '304 patent for performing this claimed  
16 function, and which comprises as well as or instead of said display screen and separate from the  
17 handholdable unit, is a television screen. *See, e.g.*, '304 patent, 17:59-67 ("In a merchandising  
18 system, where bar codes or other codes are associated with merchandisable items, this could be  
19 achieved simply by means of a printed catalogue, or some other form of list, or as a result of  
20 codes applied to examples of the products in question, or as a result of codes displayed, for  
21 example, on a TV screen with images relating to those products. The only requirement is that  
22 the display of the codes are readable by the data entry system of the present invention."); *see*  
23 *also*, '304 patent, 4:62-5:10 ("It enables the user to make shopping selections from a catalogue or  
24 from a series of options displayed on a television screen from the comfort of his or her home  
25 without the need to connect the device to a conventional telephone network. A hand held unit  
26 including a wireless telephone network interface such as a cellular network interface finds  
27 particular application where the user of the system is travelling from place to place and may need  
28 to perform data entry functions when they are far from a conventional wired telephone network

socket.”). The proper construction of this term is therefore: a television screen separate from the hand holdable unit, and equivalents thereof.

Regarding the third means-plus-function term, claims 94, 95, 103, and 104 of the ‘304 patent include the limitation of “additionally comprising as well as or instead of said display screen, and separate from said *data entry device*, means for displaying a selectable item with associated data sources for user selection of an item by operation of said *data entry device*.” This term is identical to the term discussed immediately above, with the exception of exchanging the “handholdable unit” and the “data entry device,” a distinction that makes no difference in the context of the proper construction of this term. The proper construction of this term is therefore: a television screen separate from the handholdable unit, and equivalents thereof, for the same reasons as set out above.

#### 7. “Written text” terms

Term	Claims containing the term	HTC’s Proposed Construction	DataQuill’s Proposed Construction
<i>written text</i>	‘304 Patent Independent 80, 81, 82, 83	handwritten text	means what it says and no elaboration is needed

Each of independent claims 80, 81, 82 and 83 of the ‘304 patent includes the limitation of “wherein a said reading sensor is for reading coded data such a fingerprints or signatures or written text.” (claims 80, 82, and 83) or, “wherein said coded data comprises fingerprints, or signature, or written text” (claim 81). While the term “written text” appears in the claims, it does not appear in the specification of the ‘304 patent.

However, the patent describes “text” is described as printed text appearing on the display. See ‘304 patent, 11:13-24 (“In this example of operation, in step S4, when an option ‘Left-handed operation’ is encountered on the screen, the pen is scanned of the ‘Enter’ command bar code on the command sheet of FIG. 6. Whereas for right-handed operation, where text is displayed in English, the text is displayed in sequence from the end of the display nearest the reading head 14 towards the opposite end, for left-handed operation the text display is inverted with the text then reading from the end of the display furthest from the reading head to the end



nearest thereto.”). Therefore, a distinction must be made between “written text” and mere “text.” *See Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (claims are interpreted with an eye toward giving effect to all terms in the claim). DataQuill could have used the word “text” but chose to add the adjective “written” to arrive at the claimed “written text” instead.

Further, since “written text” does not appear in the ‘304 patent specification, it is appropriate to refer to extrinsic evidence. One appropriate dictionary definition for “write/written” is Webster's Tenth New Collegiate Dictionary 1367 (1993) (Ex. C [129]): “write/written: 1(a) to form (as characters or symbols) on a surface with an instrument (as a pen); b: to form (as words) by inscribing the characters or symbols of on a surface.” As such, the proper construction for “written text” is: handwritten text.

#### 8. “Natural language” terms

Term	Claims containing the term	HTC's Proposed Construction	DataQuill's Proposed Construction
<i>natural language characters</i>	<b>‘340 Patent</b> <u>Independent</u> 80, 81, 82, 83, 100, 101 <u>Dependent</u> 20, 41, 53	user understandable language characters such as common English	means what it says and no elaboration is needed; Alternatively: user understandable language characters such as common English

Independent claims 80, 81, 82, 83, 100, and 101 dependent claims 20, 41, and 53 of the ‘304 patent include the limitation regarding “natural language characters.” *See, e.g.*, claims 80, 81, 82, and 83 (“the controller is arranged to access the store information for selectable items to determine natural language characters or images corresponding to the coded data for display”). The ‘304 patent discloses functionality relating to natural language characters at column 5, lines 18-29 (“The invention also provides a carrier for a plurality of data and/or command codes e.g., bar and/or dot codes) for association with means for displaying a plurality of selectable items in a data entry system or a merchandising system as defined above, wherein the carrier carries a plurality of codes, each for a respective one of a plurality of natural language and/or numeric characters, and a plurality of commands for controlling the operation of the data entry or merchandising system, each code being associated with a visual representation of the corresponding natural language or numeric character or command and/or of a graphical

representation thereof.”). However, the ‘304 patent does not define “natural language characters” specifically. Accordingly, it would be appropriate to refer to extrinsic evidence. One appropriate dictionary definition is: **“natural language (software):** A language whose rules are based on current usage without being explicitly prescribed. Examples include English, Chinese, French and Swahili.” IEEE Standard Dictionary of Electrical and Electronics Terms 566 (3rd ed. 1984) (Ex. C [117]).

DataQuill’s primary position is that “the term means what it says and no elaboration is needed.” However, if the term is to be construed, DataQuill’s alternative proposed construction is identical to HTC’s proposed construction. Since HTC has requested construction of this term for the benefit of the jury, the Court should consider the term during the claim construction process. Because construction would aid the jury, the Court should adopt HTC’s construction. The proper construction for “natural language characters” is: user understandable language characters such as common English.

**9. “Comprises one or two manually operable switches for scrolling said display in a first and/or second direction”**

<b>Term</b>	<b>Claims containing the term</b>	<b>HTC’s Proposed Construction</b>	<b>DataQuill’s Proposed Construction</b>
<b>“comprises one or two manually operable switches for scrolling said display in a first and/or second direction...”</b>	<b>‘304 patent</b> <u>Dependent</u> claims 8, 39	includes only one or only two devices that can be operated by hand to make or break an electrical connection for moving up or down through a sequential display of information	includes at least one or two devices for making, breaking or changing the connections in an electrical circuit, which can be operated by hand, for stepping through text or graphics displayed on a display

Dependent claims 8 and 39 add the limitation that the data entry device “comprises one or two manually operable switches for scrolling said display in a first or second direction...” This term should be construed to mean “includes only one or only two devices that can be operated by hand to make or break an electrical connection for moving up or down through a sequential display of information.”

1 The plain meaning of “switch” is a device that can be operated to make or break an  
2 electrical connection. It is plain meaning that a “manually operable switch” is a switch that is  
3 operated by hand. Thus, it follows that a manually operable switch is a device that can be  
4 operated by hand to make or break an electrical connection. “Scrolling a display” means moving  
5 up or down through a sequential display of information. ‘304 patent, 7:15-18, 12:12-18. An  
6 important aspect of the term “one or two manually operable switches for scrolling said display”  
7 is that it specifically calls for “one or two.” The parties dispute the meaning of “comprises one  
8 or two” in this overall claim term. HTC contends that the use of “comprises one or two” is that  
9 the device includes only one switch that can be used for scrolling, or the device includes only  
10 two switches that can be used for scrolling, but the device cannot contain more than two switches  
11 that can be used for scrolling. While this claim begins with the word “comprises,” which  
12 typically has the meaning of “including, but not limited to,” the inclusion of the words “one or  
13 two” supersedes the open ended nature normally created by “comprising.” The reason for this is  
14 that “one or two” adds a requirement of a specific number. To allow “comprises one or two” to  
15 mean one or two or three or twenty-six, as DataQuill’s approach would allow, would render the  
16 words “one or two” meaningless. It is a basic tenet of claim construction that all words in a  
17 claim must be given meaning. *Innova/Pure Water, Inc.*, 381 F.3d at 1119.

18 The patent specifically teaches the advantages of one or two key switches and the  
19 elimination of a keyboard (which could contain more switches):

20 Also, although in the present examples two mechanical key switches are  
21 provided, in other embodiments one key switch only could be provided.  
22 Operating that key switch a predetermined number of times within a short period  
23 could be used to emulate the provision of two key switches for scrolling and other  
24 functions. More key switches could also be provided in other embodiments. For  
25 example, a numerical keypad could be provided. However, in preferred  
26 embodiments of the invention, the number of keys should be kept as low as  
27 possible for any particular application. As in the embodiments described above,  
28 two key switches are preferred. The control sheet or data carrier effectively forms  
a keyboard extension for the pen.

‘304 patent, 17:23-35. While the patent discloses that it could be possible to have more than two  
switches, the claim at issue must be interpreted as being directed to the specific preferred  
embodiments that have only one or two switches because of the way that the claim is worded.

Otherwise, the patent applicants could have worded the claim in a way that did not limit the device to one or two switches.

Perhaps most significantly, the Federal Circuit has interpreted claims containing similar terms and has concluded that they are limitations despite the use of the word “comprising.” In *Innovad Inc. v. Microsoft Corp.*, 260 F.3d 1326 (Fed. Cir. 2001), the court dealt with the interpretation of a claim of U.S. Patent No. 4,882,750, which, in pertinent part, contained the following language directed to a telephone dialer system having elements [a] through [f]:

**A telephone dialer system, comprising:**

**[a] a case having at least one surface...**

**\* \* \***

**[f] a single, bi-state switch operable from the exterior of said case for activating said signal means to produce said sequence of dual tone modulated frequency signals during said dialing mode corresponding to said digits in said reprogrammable memory means ;**

**[g] programming means for programming said reprogrammable memory means with said at least one telephone number during said programming mode;**

**\* \* \***

*Id.* at 1329 (emphasis added). The function of the switch in element [f] is to produce tones for dialing a stored number. *Id.* at 1333.

The Federal Circuit explained that claim elements [a] through [f] make up what is referred to in the patent specification as a “dialer unit” and that the claimed telephone dialing system contains three parts: 1) a dialer unit (elements [a]-[f]); 2) a programming means (element [g]); and 3) a means for releasably electrically coupling the reprogrammable memory means (element [h]). *Id.* at 1331. One issue in the case was whether the reference in element [g] to a “single, bi-state switch” precluded the presence of other switches in the telephone dialing system. The court further explained that the patent specification repeatedly stated that the dialer unit (claimed as elements [a]-[f]) does not contain a keypad, *Id.* at 1331-1332; “[a] keypad, after all, has a number of switches,” *Id.* at 1333; and that, when properly construed, “the programming means--element [g]--may include a keypad.” *Id.* at 1331-1332. However, while the court concluded that the recitation of a “single, bi-state switch...” in the claimed dialer unit

1 did not preclude the presence of other bi-state switches on the exterior of the dialer unit, it did  
 2 preclude the presence of other switches for performing the recited function:

3 For the reasons stated above, the dialer unit does not have a keypad. The term “single,  
 4 bi-state switch,” as well as the specification describing that term, do not limit the dialer  
 5 unit to only one bi-state switch. The claim language does not preclude other switches on  
 6 the exterior of a dialer unit, such as another switch to choose a different preprogrammed  
 7 telephone number. ***The term “single,” however, precludes the use of multiple switches  
 to perform the activating function for one phone number. Only a single switch  
 activates the dialing function for a preprogrammed number.***

8 *Id.* at 1333 (emphasis added).

9 Under the Federal Circuit’s reasoning, while the language “comprises one or two  
 10 manually operable switches for scrolling said display in a first and/or second direction...” in the  
 11 claims of the ‘304 patent would not preclude the presence of other switches, this language would  
 12 preclude the presence of any other manually operable switches that perform the function of  
 13 scrolling the display in a first or second direction. Thus, any infringing product would have to  
 14 contain one or two switches that could be used for scrolling the display but could not contain any  
 15 more than two switches for scrolling the display.

#### 16 **10. “Downloading” and “To Download” Terms**

17 On page 13 of the Joint Claim Construction Chart (document 61), the term “to download”  
 18 is highlighted in claim 62, with proposed constructions provided. Similarly, on page 14 of the  
 19 same document, the term “downloading” appears in bold for claim 62, with proposed  
 20 constructions provided. However, since these terms are subsumed in the “updating” and “up to  
 21 date” terms described above, HTC believes “downloading” and “to download” terms, in  
 22 isolation, should be given their ordinary meaning.

23 ///

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1 **VII. CONCLUSION**

2 For the foregoing reasons, this Court should adopt the foregoing claim constructions  
3 proposed by HTC.

4  
5 Dated: December 3, 2010

Respectfully submitted,

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